

804 KAR 4:015. Interlocking substantial interest between licensees prohibited.

RELATES TO: KRS 243.030, 243.040, 243.110, 244.240, 244.570, 244.590

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241 - 244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "three tiered" system. The three (3) tiers of this system are designated as manufacturer/producer, wholesaler/distributor, and retailer. Each of these three (3) levels operates separately, distinctly, and apart from each other for the purpose of control. In order for this control to be effectively administered by this board, it is necessary to prevent any type of interlocking substantial interest by and among the three (3) separate tier levels. This administrative regulation provides additional detail regarding incompatible licenses and prohibited interlocking substantial interests among the tiers.

Section 1. Definitions. (1) "Manufacturer" means a person or entity who is a distiller, rectifier, winery, brewer, or who otherwise produces alcoholic beverages, whether located within or without this state.

(2) "Retailer" means a person or entity who sells alcoholic beverages at retail, whether located within or without this state, excepting manufacturers with limited retail privileges or the right to hold certain retail licenses.

(3) "Substantial interest" means:

(a) Membership in, or a direct or indirect ownership interest in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity, whether individually, or by a spouse, or in combination with a spouse, which amounts to ten (10) percent or greater of the total ownership or membership interests;

(b) A common officer, director, manager, or employee with managerial responsibilities, in a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity;

(c) A common owner, partner, or member, including a spouse, the aggregate share of which is ten (10) percent or greater of the total ownership of, or membership in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity; or

(d) Any other direct or indirect interest which provides an ability to control or influence decisions by a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity.

(4) "Wholesaler" means a person or entity who is a wholesaler, distributor, or who sells alcoholic beverages at wholesale, located within this state.

Section 2. A manufacturer shall not have or acquire a substantial interest in the establishment, maintenance, or operation of the business of a wholesaler or a retailer. A manufacturer shall not have or acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a substantial interest in the premises of a retailer.

Section 3. A wholesaler shall not have or acquire a substantial interest in the establishment, maintenance, or operation of the business of a manufacturer or retailer. A wholesaler shall not have or acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a substantial interest in the premises of a retailer.

Section 4. A retailer shall not have or acquire a substantial interest in the establishment, maintenance, or operation of the business of a manufacturer or wholesaler.

Section 5. The malt beverage administrator and distilled spirits administrator, as appropriate, shall examine every applicant for a new or renewal license to determine whether issuance or renewal of the license is prohibited under applicable law or this administrative regulation. If the issuance or renewal of the license is prohibited, the appropriate administrator shall not issue or renew the license.

Section 6. This administrative regulation shall not apply to:

(1) Prohibit an affiliated business arrangement which meets the requirements provided in 804 KAR 4:280, Section 2;

(2) A license issued prior to June 24, 2015, for any prohibited substantial interests resulting from the ownership interests of a spouse; or

(3) A license issued prior to December 1, 1976. (3 Ky.R. 426; eff. 12-1-1976; Am. 17 Ky.R. 1860; 2192; eff. 12-14-1990; 27 Ky.R. 1334; 1803; eff. 1-15-2001; 42 Ky.R. 525; 1571; 1736; eff. 1-4-2016.)